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FEDERAL COMMUNICATIONS COMMISSION  
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Satellite and Radiocommunication Division  
Satellite Policy Branch

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	
	)	
Mobile Communications Holdings, Inc.	)	File Nos. 11-DSS-P-91(6)
	)	18-DSS-P-91(18)
	)	11-SAT-LA-95
	)	12-SAT-AMEND-95
and	)	
	)	
Loral/Qualcomm Partnership, L.P.	)	File Nos. 19-DSS-P-91 (48)
	)	CSS-91-014
	)	21-SAT-MISC-95
	)	
for Authority to Construct, Launch,	)	
and Operate a Low Earth Orbit Satellite	)	
System in the 1610-1626.5 MHz/	)	
2483.5-2500 MHz Band	)	

**CONSOLIDATED APPLICATION FOR REVIEW  
AND REQUEST FOR CLARIFICATION**

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Dated: March 2, 1995

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## Summary

Mobile Communications Holdings, Inc. ("MCHI") requests that the Commission reconsider the staff's decision to find MCHI not financially qualified to be granted authority to construct, launch and operate a low Earth orbit satellite system above 1 GHz ("Big LEO") in the Mobile Satellite Service ("MSS"). MCHI submits that it should be deemed by the Commission to be financially qualified based upon the record in this proceeding. In particular, MCHI submits that the Commission's staff inadvertently misinterpreted the management commitment letters provided by two of MCHI's integral equity partners: Westinghouse Electric Corporation ("Westinghouse") and Israel Aircraft Industries ("IAI"). To resolve any ambiguity, MCHI has included herein management letters from Westinghouse and IAI that reaffirm their support for MCHI's ELLIPSO™ project.

In addition, MCHI submits that its two management commitment letters, whether considered individually or together, constitute a firmer commitment than the Loral Corporation's management commitment letter written on behalf of a similarly situated Big LEO applicant, the Loral/Qualcomm Partnership, L.P. ("LQP"). The Commission staff arbitrarily and capriciously ignored evidence in the record that Loral was not committed to expend the necessary funds on behalf of LQP's Globalstar System. Accordingly, MCHI submits that the Commission is com-

pelled to treat MCHI, a similarly situated applicant, in a similar manner by finding its superior management commitment letters satisfactory.

Finally, MCHI requests clarification that deferred Big LEO applicants who submit amended applications prior to January 31, 1996 will be processed as and when they are filed. In several recent statements by the Commission and its staff, the Commission has ambiguously implied that (1) deferred applicants have "until January 31, 1996" to file amended applications substantiating their financial qualifications, and (2) the Commission's decision on how to treat such applications is not final. Clarifying that such applications will be processed as and when the necessary financial showings are filed would serve the public interest by encouraging competition in the emerging MSS service, promoting the rapid delivery of innovative communications services and accelerating the achievement of universal service. Conversely, providing certain Big LEO applicants from the November 16, 1994 processing pool with a full year's head start would provide certain licensees with an arbitrary and inequitable advantage.

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**CONSOLIDATED APPLICATION FOR REVIEW  
AND REQUEST FOR CLARIFICATION**

**I. Introduction**

Mobile Communications Holdings, Inc. ("MCHI"), by its attorneys, submits this Consolidated Application for Review and Request for Clarification pursuant to Section 1.115 of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. § 1.115, of the International Bureau's decisions in the above captioned proceedings to, variously, grant Loral/Qualcomm Partnership, L.P. ("LQP") a Mobile Satellite Service ("MSS") license to operate an above 1 GHz low-

Earth orbiting satellite system ("Big LEO"),<sup>1</sup> and defer consideration of MCHI's Big LEO license application because of its finding that MCHI did not demonstrate that it is financially qualified to serve as a Big LEO licensee.<sup>2</sup> In addition, MCHI requests clarification that MCHI and similarly situated applicants have until January 31, 1996 to file amended applications and that such amended applications will be processed as and when they are filed.

## II. Statement of Interest

MCHI filed a Big LEO license application with the Commission and an amendment thereto following the adoption of the final rules in the Big LEO service rules proceeding.<sup>3</sup> In addition, MCHI participated in the Big LEO service rules and

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<sup>1</sup> See In re Application of Loral/Qualcomm Partnership, L.P. For Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands, Order and Authorization, File Nos. 19-DSS-P-91 (48), CSS-91-014, 21-SAT-MISC-95, DA 95-128 (released January 31, 1995) ("LQP Order").

<sup>2</sup> See In re Application of Mobile Communications Holdings, Inc. For Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, Order and Authorization, File Nos. 11-DSS-P-91 (6), 18-DSS-P-91 (18), 11-SAT-LA-95, 12-SAT-AMEND-95, DA 95-132 (released January 31, 1995) ("MCHI Order").

<sup>3</sup> See Application of Mobile Communications Holdings, Inc. For Authority to Construct ELLIPSO™, an Elliptical Orbit Mobile Satellite System in the 1610-1626.5 MHz and 2483.5-2500 MHz Bands, filed November 5, 1990, File Nos. 11-DSS-P-91 (6), 18-DSS-P-91 (18) ("ELLIPSO™ I") (The first application filed with the Commission requesting authority to launch, construct and operate in subject Big LEO bands); Application of Mobile Communications Holdings, Inc.  
(continued...)

spectrum allocation proceeding.<sup>4</sup> The MCHI Order adopted by the Commission staff adversely affected MCHI. In addition, MCHI submits that the grant of a Big LEO license to LQP in the staff's LQP Order -- a prospective competitor of MCHI -- was adopted by the staff pursuant to an inequitable and inconsistent application of the Commission's Rules in comparison to the MCHI Order. Accordingly, MCHI has standing to file this Consolidated Application for Review and Request for Clarification for purposes of Section 1.115 of the Commission's Rules.

### **III. Background**

Pursuant to the Commission's MSS financial qualification rules applicable to Big LEO applicants, an applicant is deemed financially qualified if it shows the availability of resources sufficient to cover the costs of launching, con-

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<sup>3</sup>(...continued)

For Authority to Construct ELLIPSO™, an Elliptical Orbit Mobile Satellite System in the 1610-1626.5 MHz and 2483.5-2500 MHz Bands, filed June 3, 1991, File Nos. 11-DSS-P-91 (6), 18-DSS-P-91 (18) ("ELLIPSO™ II") (Requesting authorization of an additional eighteen satellites); Amendment of Application of Mobile Communications Holdings, Inc. For Authority to Construct ELLIPSO™, an Elliptical Orbit Mobile Satellite System in the 1610-1626.5 MHz and 2483.5-2500 MHz Bands, filed November 16, 1994, File Nos. 11-DSS-P-91 (6), 18-DSS-P-91 (18) ("MCHI Amendment").

<sup>4</sup> See In re Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, CC Docket No. 92-166, 9 FCC Rcd 4936 (1994) ("Big LEO Order"). MCHI's petition for review is pending in Mobile Communications Holdings, Inc. v. Federal Communications Commission, No. 94-1695, (D.C. Cir. Nov. 8, 1994) ("MCHI v. FCC").

structuring and operating for the first year a Big LEO system.<sup>5</sup> An applicant's management must also commit that, absent a change in material circumstances, it is prepared to expend the necessary funds from such internal resources.<sup>6</sup> If the applicant does not have such internal resources or its management is unable to make such a commitment, it must demonstrate that it has external sources of funding that are irrevocably committed to expend such necessary funds.<sup>7</sup> The Commission has recognized that the management commitment to expend internal sources of funding is "exactly equivalent to the irrevocable financing required for companies who require external financing to fund a satellite system."<sup>8</sup> Where there is adequate management commitment from internal sources of funding, however, there is no additional requirement that the applicant must (1) actually expend all of the necessary funds from such internal sources,<sup>9</sup> or (2) obtain irrevocable commitments from external sources of funding.<sup>10</sup>

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<sup>5</sup> Id. at paras. 26-42.

<sup>6</sup> Id. at para. 31.

<sup>7</sup> Id. at para. 32.

<sup>8</sup> Opposition of the Federal Communications Commission to Petitioner's Emergency Motion for a Stay Pending Review at 14, filed Nov. 14, 1994, MCHI v. FCC (D.C. Cir.) (No. 94-1695) ("Commission Opposition Motion").

<sup>9</sup> Although by making the commitment to the Commission, it must be prepared to do so if third-party financing is unavailable in whole or in part.

<sup>10</sup> Big LEO Order at para. 32.



**IV. The Staff Arbitrarily and Capriciously Found One Similarly Situated Applicant, LQP, Financially Qualified and Another, MCHI, Financially Unqualified**

In MCHI's Consolidated Petition to Deny against the application of LQP, MCHI argued that LQP failed to provide the Commission with the adequate assurance that its management was fully committed to expend the necessary funds to launch and construct its system, and incur the operational costs for one year.<sup>11</sup> Specifically, in Loral Corporation's management letter ("Loral Letter"), Michael B. Targoff, Senior Vice President of Loral stated that Loral was "prepared to expend the necessary funds, or take all reasonable steps to cause LQP to raise and expend the necessary funds, to construct and launch ... and to operate the satellite system for one year."<sup>12</sup> Although Loral attests that it has assets that exceed LQP's estimated \$1.544 billion launch, construction and first-year operational costs, MCHI submits that the Loral Letter equivocates in its commitment and thereby failed to meet the allegedly stringent financial qualification standard for a management commitment of funding

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<sup>11</sup> See MCHI Consolidated Petition to Deny, filed December 22, 1994, In re Applications of Constellation Communications, Inc., Loral/Qualcomm Partnership, L.P., Motorola Satellite Communications, Inc., TRW Inc. For Authority to Construct, Launch, and Operate Low-Earth Orbit Mobile Satellite Systems in the 1610-1626.5 MHz and 2483.5-2500 MHz Bands, File Nos. 9-SAT-LA-95, 10-SAT-AMEND-95, File Nos. 13-SAT-LA-95, 14-SAT-AMEND-95, File Nos. 15-SAT-LA-95, 16-SAT-AMEND-95, File Nos. 17-SAT-LA-95, 18-SAT-AMEND-95 ("MCHI Consolidated Petition to Deny").

<sup>12</sup> Letter from Michael B. Targoff, Senior Vice President of Loral Corporation to the Federal Communications Commission, Washington, D.C. (November 14, 1994) (emphasis added).

from internal sources or for a commitment from external sources that was applied to MCHI.

LQP's Loral Letter does not meet the management commitment standard because the relevant statement is qualified by an "or" clause which, by its plain meaning, indicates that Loral is not committed to expend the necessary funds. Rather, it is committed to expend its internal resources or, apparently at its discretion, to seek to raise capital for LQP. Therefore, the Loral Letter fails to adequately commit its management on behalf of LQP. Because the Loral Letter does not establish acceptable internal source funding for LQP, then it could only serve to financially qualify LQP if it met the "equivalent standard" applicable to external sources of funding. MCHI submits, however, that the Loral Letter also fails to meet the external source standard because it does not constitute an irrevocable commitment by any external sources to LQP.

By denying in the LQP Order the objections raised by American Mobile Satellite Corporation ("AMSC") and MCHI in their respective Petitions to Deny regarding the Loral Letter, the staff established that a partial and contingent commitment satisfied the financial qualification standard. It was therefore obligated to apply the same standard to MCHI.

In fact, the staff was apparently so convinced of LQP's qualifications that it failed even to address the meaning of the Loral Letter's equivocation and

instead concluded that the "Loral Corporation has provided [in the Loral Letter] an unequivocal statement that it is prepared to expend the funds necessary to construct, launch, and operate the proposed system for one year."<sup>13</sup> To the extent that there could be any ambiguity regarding the meaning of the disjunctive "or" in the Loral Letter, the true contingent nature of Loral's commitment was established conclusively by the following statement contained in its SEC 10-K, made subject to criminal penalties:

[Globalstar's] [t]otal system cost through 1998, the expected in-service date, is expected to total approximately \$1,800,000,000, which Globalstar intends to finance through sales of additional equity, advance payments from service providers, and debt financing.

. . . [Loral] has a total capital commitment of \$107,000,000. . . . By sales of its equity interest to other strategic partners through subsequent Globalstar equity offerings, [Loral] expects to reduce its direct and indirect equity interest to approximately 25%.<sup>14</sup>

In addition, Globalstar's SEC S-1 Registration Statement states that:

[a]lthough Globalstar believes that it will be able to obtain the additional financing it requires, there can be no assurance that the capital required to complete the Globalstar System will be available from the public or private capital markets or from its existing partners on favorable terms or on a timely basis, if at all. A substantial short-

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<sup>13</sup> LQP Order at para. 10 (emphasis added).

<sup>14</sup> See Loral 10-K at F-10. This statement also makes it clear that whatever future financing LQP may acquire through sales of additional equity, Loral will not be a potential buyer, but only a seller of LQP equity.

fall in meeting its capital needs would prevent completion of the Globalstar System.<sup>15</sup>

MCHI submitted this information into the record of this proceeding.

The Commission's staff had an opportunity, therefore, to review evidence in the record which demonstrated that Loral was committed to invest only \$107 million and that if LQP did not acquire the approximately 1.5 billion (1.8 billion according to the Loral 10-K) of additional necessary funds through unidentified and uncommitted external financing, the project would fail and investors could lose all of their money. Such a discussion of this particular risk would not be present if Loral were irrevocably committed to expend the funds needed to cover the construction, launch and first-year operation costs.<sup>16</sup>

In contrast to LQP's showing, the Big LEO Order requires a truly unequivocal management commitment standard: "consistent with our approach to credit arrangements provided by outside sources, management of the corporation

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<sup>15</sup> See Globalstar Form S-1 Registration Statement, SEC Number 33-86808, at 10 (filed November 29, 1994) (emphasis added).

<sup>16</sup> In the LQP Order, the Commission's staff limited its analysis to the Loral Letter and rightfully ignored a subsequent letter from the Loral Corporation dated December 29, 1994, which seeks to expand upon its prior statements in a manner belied by its own statements submitted under penalty of criminal sanction to the SEC. See supra notes 23 and 26.

providing the funding must commit that absent a material change in circumstances, it is prepared to expend the necessary funds."<sup>17</sup>

Accordingly, given the standard employed in the LQP Order, if the Commission affirms the staff's grant of the LQP license, then MCHI submits that the Commission must also accept MCHI's financial showing<sup>18</sup> and therefore find MCHI financially qualified.<sup>19</sup> Alternatively, because the staff erroneously deemed LQP to be financially qualified, MCHI respectfully requests that the Commission reverse the staff's decision to grant LQP a Big LEO license.

**V. The Staff's Conclusion That MCHI Is Not Financially Qualified Is Erroneous and Must Be Reversed**

MCHI submits that the Commission staff erred in finding that MCHI is not financially qualified as a MSS applicant in the MCHI Order. MCHI submitted with its November 16, 1994 amendment to its Big LEO license application management commitment letters from the following equity partners of MCHI: Westinghouse Electric Corporation ("Westinghouse"), Harris Corporation ("Harris"), Israel Aircraft

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<sup>17</sup> Big LEO Order at para. 35 (citing Licensing Space Stations in the Domestic Fixed-Satellite Service, CC Docket No. 85-135, FCC 85-395, 50 Fed. Reg. 36071, 36074, fn. 26 (1985)).

<sup>18</sup> As discussed below, MCHI percentage of committed funds for its ELLIPSO™ project exceeds the 6.9% the Loral Corporation has committed to LQP.

<sup>19</sup> See, e.g., Melody Music, *supra* note 26.

Industries, Ltd. ("IAI"), Cable & Wireless (C&W"), Spectrum Network Systems Limited ("SNS") and AEC-Able Engineering Company ("AEC-Able"). In addition, MCHI's Reply referenced several irrevocable contracts totaling \$14.1 million.<sup>20</sup> Further, Arianespace has irrevocably committed vendor financing totaling \$45 million. In its amendment, MCHI estimated that the costs of construction, launch, and first-year operation for its sixteen-satellite system will total \$564 million.

MCHI submits that on the basis of the Westinghouse and IAI management commitment letters ("Westinghouse Letter") alone, the Commission should deem MCHI financially qualified. The MCHI Order states that "Westinghouse's involvement appears limited to serving as a supplier of ground segment facilities, and as a holder of less than 2% interest in MCHI."<sup>21</sup> MCHI submits, however, that the staff has significantly underestimated the role of Westinghouse. Upon completion of final negotiations, Westinghouse expects to hold a 30% (or more) equity interest in MCHI.<sup>22</sup> As an internal source of funding, MCHI already submitted evidence in this proceeding that Westinghouse's current assets and operating income exceeds the ELLIPSO™ projects estimated \$564 million in necessary funds.<sup>23</sup>

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<sup>20</sup> MCHI Order at para. 10.

<sup>21</sup> MCHI Order at para. 12.

<sup>22</sup> Compared to Loral Corporations expected 25% share of LQP's total equity. See infra text at note 14.

<sup>23</sup> MCHI Application at Ex. 3, App. B.

In addition, Westinghouse reaffirms in the attached clarification that "Westinghouse is prepared to have its equity investment expanded to fund a portion of the launch, construction, and first year operational costs of the MCHI ELLIPSO™ project absent a material change in circumstances."<sup>24</sup> Furthermore, Westinghouse reaffirms in the attached clarification that it will also fully support the financing of the ELLIPSO™ project from external sources. Without considering other equity investors or supplier financing, Westinghouse's position alone will support additional debt financing of several hundred million dollars if such debt financing is necessary.

Further, MCHI submits that the IAI management commitment letter ("IAI Letter"), particularly as clarified in the attachment, is further supporting evidence that MCHI is financially qualified. It appears from the MCHI Order, however, that the Commission staff misconstrued the extent of IAI's commitment to the ELLIPSO™ project. In an effort to resolve any ambiguity, MCHI submits herein a letter from Mr. Jacob S. Weiss, Deputy General Counsel of IAI,<sup>25</sup> that clarifies and reaffirms that (1) IAI, although its financial statements are not publicly available, has current assets and operating income in 1994 that exceeded \$600 million, (2) IAI has

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<sup>24</sup> Letter from Milton F. Borkowski, Vice President, Westinghouse Electronic Systems Group, Westinghouse Electric Corporation to the Federal Communications Commission, Washington, D.C. (March 1, 1995) (Exhibit A hereto).

<sup>25</sup> Letter from Jacob S. Weiss, Deputy General Counsel, Israeli Aircraft Industries to the Federal Communications Commission, Washington, D.C. (March 1, 1995) (Exhibit B hereto).

significantly increased its total equity holdings in MCHI, and (3) IAI is an integral equity partner of MCHI and fully prepared to support MCHI's efforts to fund the ELLIPSO™ project absent a material change in circumstances.<sup>26</sup>

By providing the requisite level of management commitment, it is irrelevant whether Westinghouse or IAI will actually expend from internal sources all of the necessary funds for the launch, construction and first-year operation of MCHI's ELLIPSO™ project.<sup>27</sup> The Westinghouse and IAI Letters reflect a level of management commitment that is at least equal to that of the other applicants' management commitment letters the Commission's staff has found acceptable: Motorola, LQP, and TRW, Inc. ("TRW"). Indeed, as discussed above, the Commission staff disregarded conclusive evidence that Loral Corporation was not committed to expend the necessary funds on behalf of LQP but rather was committed to expend no more than

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<sup>26</sup> Because the Commission's staff accepted and considered a similar post-November 16, 1994 clarification from a similarly situated Big LEO applicant, Motorola Satellite Corporation, Inc. ("Motorola"), MCHI requests that its IAI Letter is accorded similar treatment. See Melody Music v. FCC, 345 F.2d 730, 732-33 (D.C.Cir. 1985) (requiring that the Commission treat similarly situated applicants in a similar manner) ("Melody Music"). See also In re Application of Motorola Satellite Communications, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1616-1626.5 MHz Band, Order and Authorization at para. 8, File Nos. 9-DSS-P-91(87), CSS-91-010, 43-DSS-AMEND-92, 15-SAT-LA-95, 16-SAT-AMEND-95, DA 95-131 (January 31, 1995) (wherein the Commission staff considers and discusses an explanatory Declaration of Mr. Koeneman, Executive Vice President and Chief Financial Officer of Motorola, Inc. regarding Motorola's omission of the word "launch" in its first management commitment letter).

<sup>27</sup> See Big LEO Order at para. 35; see also supra note 8.



\$107 million of LQP's estimated total cost of \$1.554 billion (a mere 6.9% of LQP's total necessary funds -- a lower percentage of committed funds than ELLIPSO™ project).<sup>28</sup> In view of the fully satisfactory management commitment letters from IAI and Westinghouse, as well as MCHI's other commitments, MCHI respectfully requests that the Commission reverse the staff decision and find MCHI to be a financially qualified Big LEO applicant.

**VI. The Commission Must Clarify That Deferred Applicants Will Be Processed As and When The Necessary Financial Showings Are Filed**

In several instances in the MCHI Order, the Big LEO Order and the Commission Opposition Motion, the Commission has ambiguously suggested that (a) applicants in the November 16, 1994 processing pool not found to be financially qualified on January 31, 1995 may re-submit amended applications and have them processed on a first-come, first-served basis until January 31, 1996, and (b) this decision has not been finalized.<sup>29</sup> MCHI requests clarification that such applicants

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<sup>28</sup> MCHI Consolidated Petition to Deny at 11 (citing p. F-10 of the Loral Corporation's Form 10-K filed with the Securities and Exchange Commission on March 31, 1994 (File No. 1-4238)).

<sup>29</sup> For example, the following appears in the Big Leo Order:

If, however, some grants have been made prior to January 1996, and a mutually exclusive situation arises then, the auction procedure outlined below cannot be used. However, given the uncertainty that such a situation will ever arise, we will not at this time decide how to process any such remaining mutually  
(continued...)

have until January 31, 1996 to file amended applications and will have such amended applications processed as and when they are filed or on a first-come, first-served basis. As described below, most of the ambiguity centers on the meaning of the word "until" in the context of "until January 31, 1996." When used in the context of a deadline, such as "sale lasts until Sunday," MCHI submits that this word is reasonably interpreted to mean that one has an opportunity that begins upon announcement and terminates with the passing of the deadline, unless otherwise specified. MCHI submits that the MCHI Order, the Big LEO Order and the Commission Opposition Motion fall under this "reasonable interpretation" and fail to specify restrictions to the contrary.

For example, the following statement concerning the first-come, first-served issue appear in the MCHI Order: "MCHI will therefore have until January 1996 to firm up its financial qualifications, in accordance with the Big LEO Order."<sup>30</sup> The Big LEO Order, in turn, contains numerous statements on this issue:

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<sup>29</sup>(...continued)

exclusive applications. Presumably, however, such grants would be awarded through an auction mechanism that is appropriate in the circumstances. We have decided, however, to defer any final decision on that issue at this time. Big LEO Order at para. 42 (emphasis added).

<sup>30</sup> MCHI Order at para. 30 (emphasis added).

Applicants will be provided until January 31, 1996, at their option, in which to make a complete financial showing.<sup>31</sup>

\* \* \* \*

. . . [The Commission] will allow [applicants] until January 31, 1996 -- two months after the completion of WRC-95 -- to demonstrate compliance with the financial standard adopted today.<sup>32</sup>

\* \* \* \*

If. . . all six applicants defer their financial showings until January 1996 and all are then deemed financially qualified, we will implement the auction procedure . . . . If, however, some grants have been made prior to January 1996, and a mutually exclusive situation arises then, the auction procedure...cannot be used.<sup>33</sup>

In addition, the following statements appear in the Commission Opposition Motion:

The second track allowed applicants who did not wish to demonstrate their financial capacity by November 16 to have until January 1996 to do so. . . .<sup>34</sup> [A]pplicants choosing to defer until January 1996 would have priority rights to any licenses that were available at that time. . . .<sup>35</sup>

\* \* \* \*

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<sup>31</sup> Big LEO Order at para. 2.

<sup>32</sup> Id. at para. 40.

<sup>33</sup> Id. at para. 42 (emphasis added).

<sup>34</sup> Commission Opposition Motion at 5.

<sup>35</sup> Id.

...[T]he Order specified an auction procedure to be implemented if one of two specific circumstances came to pass: (1) if all six applicants successfully showed financial capacity by November 16, 1994; or (2) if all six applicants deferred their showing until 1996 and showed financial capacity at that time. [citation omitted] In any other event. . .[the Commission] would decide on a "mechanism appropriate in the circumstances" to be chosen when necessary.<sup>36</sup>

This last statement does not specify what "other event" it contemplates, but it reasonably implies that there could be circumstances where it is not "necessary" to resort to competitive bidding due to a lack of mutual exclusivity, which would be the case if applications are processed as and when they are filed. Therefore, MCHI submits that these statements by the Commission and its staff can be reasonably interpreted to indicate that deferred applications will be accepted as and when they are filed, and that if the Commission intended a policy as stark as "applications will not be accepted as and when they are received," it would have (and should have) stated so expressly.

Because the Commission has recognized that it is of vital importance to the domestic economy to license MSS as expeditiously as possible, MCHI submits that accepting applications as and when they are received would serve the public interest. On the other hand, delaying the commencement of processing until January 31, 1996 would unnecessarily delay the delivery of service and the creation of greater and more robust competition from such new entrants. Indeed, with the head start

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<sup>36</sup> Id. at 6 (emphases added) (citation omitted).

granted to Big LEO licensees AMSC, Motorola, TRW and LQP, and the rise of PCS, ESMR and digitalized cellular networks, such a delay could permanently disadvantage MCHI from fairly competing in the new wireless environment. Accordingly, MCHI strongly recommends that the Commission clarify that applicants from the November 16, 1994 processing pool must file amendments no later than January 31, 1996 and that such applications will be processed and granted as and when they are received.

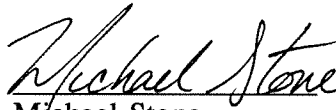
**VII. Conclusion**

For the aforementioned reasons, MCHI respectfully requests that the Commission reverse the Commission staff's decisions and to find MCHI to be financially qualified, to grant MCHI's Big LEO license application, and to defer a decision on LQP's Big LEO license application until it establishes the requisite financial qualifications. In addition, MCHI seeks clarification that amended Big LEO applications will be processed as and when they are filed.

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Dated: March 2, 1995

# **EXHIBIT A**



**Westinghouse  
Electric Corporation**

**Electronic Systems Group**

Milton F Borkowski  
Vice President & General Manager  
C<sup>3</sup>I & Marine Divisions

Box 1897  
Baltimore Maryland 21203  
410 765 6801

March 1, 1995

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: Application of Mobile Communications Holdings, Inc., for Authority to Construct, Launch and Operate ELLIPSO™, a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Bands

Dear Mr. Caton:

On behalf of Westinghouse Electric Corporation, ("Westinghouse"), this letter is submitted to clarify the nature and extent of Westinghouse's commitment to Mobile Communications Holdings, Inc. ("MCHI") for purposes of determining MCHI's financial qualifications. Westinghouse views its future equity relationship with MCHI as part of a major strategic initiative to dramatically expand our participation in global telecommunications. As an example of our commitment to this industry, Westinghouse is a major technical and financial contributor to American Mobile Satellite Corporation's initiative to provide Mobile Satellite Services (MSS) to North America.

The Commission's characterization of Westinghouse's commitment to the ELLIPSO Project does not reflect the fact that Westinghouse is in negotiations with MCHI concerning an equity interest and, upon completion of final negotiations of mutually acceptable terms and conditions, Westinghouse would expect to hold a 30% (or greater) equity interest in MCHI. Westinghouse is prepared to have its equity investment expended to fund a portion of the launch, construction and first year operational costs of the MCHI ELLIPSO project, absent a material change in circumstances.

Additionally, as stated in the November 16 application, Westinghouse intends to be the supplier of the ground segment facilities and to act as the communications system integrator. Westinghouse will also assist MCHI in its efforts to identify additional sources of financing.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M F Borkowski', written in a cursive style.

Milton F. Borkowski



# **EXHIBIT B**

March 1, 1995

Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20544

Re: Reapplication of Mobile Communications Holdings, Inc.  
("MCHI") for Authority to Construct, Launch and Operate the  
Ellipso System, a Low Earth Orbit Satellite System in the  
1610-1626.5 MHz/2483.5-2500MHz Bands

Gentlemen:

As Deputy General Counsel of Israel Aircraft Industries Ltd.  
("IAI"), I respectfully submit this letter to help clarify IAI's  
support for the Ellipso Project.

In contrast to the Commission Staff's interpretation in the  
MCHI Order, IAI should be viewed as a full partner and equity  
holder of MCHI, with the intent of providing support for the  
successful achievement of the Ellipso Project, and not a limited  
portion of same (subject to material changes in business  
conditions and normal business reviews). IAI has been an active  
equity and strategic partner of MCHI since joining the MCHI  
Ellipso Project in January of 1992. IAI has also acquired  
approximately 10% of the common shares of MCHI and we have an  
outstanding option to acquire another 65,000 shares (constituting  
approximately another 5% of the MCHI shares). IAI has been  
actively represented on the Board of Directors of MCHI from the  
inception of our relationship, in January 1992. Finally, as an  
additional expression of IAI's support of the Project, IAI has  
actively sought additional participants who would bring  
significant added value to the MCHI Team, as reflected in our  
advanced discussions with the CLAL Industries Ltd. and Eskos,  
S.A..

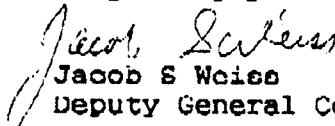
MCHI.FCC.REAPPL 3/2/95

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After reviewing the letters submitted by other Applicants who were awarded licenses (in particular, that of Loral Corporation), we do not believe that IAI's commitment to the Ellipso Project falls short of those of other industrial participants supporting competitive Applicants to the FCC.

IAI strongly believes in the technological, marketing and economic viability of the Ellipso Project and we strongly requests that the Commission give a favorable response to the MCHI Reapplication.

Very truly yours,

  
Jacob S Weiss  
Deputy General Counsel

## CERTIFICATE OF SERVICE

I, Michael Stone, do hereby certify that a true and correct copy of the foregoing "Consolidated Application for Review and Request for Clarification" was sent by first-class mail, postage prepaid, or hand-delivered, on this 2nd day of March, 1995, to the following persons:

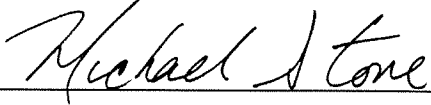
- \* Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, DC 20554
  
- \* Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
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- \* Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
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- \* Commissioner Andrew C. Barrett  
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- \* Commissioner Susan Ness  
Federal Communications Commission  
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\* Hand Delivered